

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference <b>NO 7382/WO/PCT</b>	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA416)	
International application No. <b>PCT/EP 03/07232</b>	International filing date (day/month/year) <b>07.07.2003</b>	Priority date (day/month/year) <b>06.09.2002</b>
International Patent Classification (IPC) or both national classification and IPC <b>A23G9/28</b>		
Applicant <b>NESTEC S.A. et al.</b>		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 4 sheets, including this cover sheet.
 

☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:
 

I ☒ Basis of the opinion

II ☐ Priority

III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability



IV ☐ Lack of unity of invention

V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

VI ☐ Certain documents cited

VII ☐ Certain defects in the international application

VIII ☐ Certain observations on the international application

Date of submission of the demand  <b>26.01.2004</b>	Date of completion of this report  <b>29.10.2004</b>
Name and mailing address of the international preliminary examining authority:   <b>European Patent Office</b> <b>D-80298 Munich</b> <b>Tel. +49 89 2399 - 0 Tx: 523656 epmu d</b> <b>Fax: +49 89 2399 - 4465</b>	Authorized Officer  <b>Merkel, B</b>  <b>Telephone No. +49 89 2399-2138</b> <div style="text-align: right;">  </div>

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No. PCT/EP 03/07232

## I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

### Description, Pages

1-7 as originally filed

### Claims, Numbers

1-9 as originally filed

### Drawings, Sheets

1/3-3/3 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/EP 03/07232**

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	2-9
	No: Claims	1
Inventive step (IS)	Yes: Claims	2-9
	No: Claims	1
Industrial applicability (IA)	Yes: Claims	1-9
	No: Claims	

2. Citations and explanations

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/EP 03/07232

Item V

1. D1: US-A-4 094 236 (G. H. GORDON ET AL.) 13 June 1978 (1978-06-13)  
D2: GB 697 500 A (ALFRED JAMES) 23 September 1953 (1953-09-23)  
D3: GB 472 428 A (RICHARD HIRSCHSON) 23 September 1937 (1937-09-23)  
D4: US-A-2 673 531 (BEER DONALD ALBERT E) 30 March 1954 (1954-03-30)  
D5: US-A-1 232 576 (A. C. LEICH ET AL) 10 July 1917 (1917-07-10)  
D6: US-A-3 182 611 (IRVING RUBENSTEIN) 11 May 1965 (1965-05-11)  
D7: CA-A-1 056 215 (NELHAM ASS R) 12 June 1979 (1979-06-12)  
D8: GB-A-1 219 593 (ESKIMO PIE CORP.) 20 January 1971 (1971-01-20)  
D9: US-A-2 778 321 (RICHARD HIRSCHSON) 22 January 1957 (1957-01-22)  
D10: US-A-5 931 086 (GRUBZAK YANCEY ET AL) 3 August 1999 (1999-08-03)
2. Documents D1-D5 all disclose devices for the preparation of sandwich-type ice-cream products. It appears that the devices disclosed therein comprise all features as defined in claim 1 of the pending application, i.e. a biscuit dispenser, a container, means to drive said biscuits into the container means for compressing the product and for ejecting the final product (compare especially the drawings and the description relating to said drawings of D1-D5). The features present in claim 1 are regarded to be so generic that they are also disclosed in D1-D5 although the drawings may look quite different. If not mentioned literally the compression means has to be present in D1-D5, too, otherwise no ice-cream sandwich could be prepared. Therefore claim 1 does not meet the requirements of Art. 33(2) PCT.
3. The problem of the pending application was to overcome the drawbacks of known manual instruments for the preparation of ice-cream sandwiches. With respect to pending claim 1 this problem has already been solved in the same manner in the prior art document D1-D5. However, there is no hint in the prior art to use the technical features of the characterizing part of claim 2 in order to solve said problem. Therefore claims 2-9 are regarded to meet the requirements of inventive step (Art. 33(3) PCT).
4. Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1-D5 has not been mentioned in the description, nor have these documents been identified therein.